



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170053

PRELIMINARY RECITALS

Pursuant to a petition filed November 09, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 27, 2016, via telephone. A hearing scheduled for December 22, 2015 was rescheduled at the request of Petitioner.

The issue for determination is whether evidence sufficient to demonstrate that Petitioner was overissued FoodShare benefits in the amount of \$327.00 has been presented.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Amy Schuelke and Kristine Jordahl
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner filed this appeal to contest an alleged overissuance of FoodShare in the amount of \$327.00.

DISCUSSION

The Federal Regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 *Code of Federal Regulations (CFR)* § 273.18(b), *see also FoodShare Wisconsin Handbook, Appendix §7.3.2*. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. *See, 7 CFR § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FoodShare Wisconsin Handbook, §7.3.2.1*.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that were sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused FoodShare to be issued for which the client was not otherwise eligible; documentation of the benefits actually paid, Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, etc. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. *See, generally, 7 CFR §273.15 and §273.18; FoodShare Wisconsin Handbook, §7.3.1.8*. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals. The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Here there were no records provided to Petitioner or the Division of Hearings and Appeals for the hearing for the FoodShare overpayment case. It is not possible to assess the legal sufficiency of any aspect of the alleged overpayment without documentation. Further, without the exhibits that an agency expects to use at a hearing having been sent to a petitioner prior to the hearing, especially where a petitioner appears via telephone, there is no way for a petitioner to exercise the due process rights that the hearing process has been set up to protect. Also see *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L.Ed.2d 287 (1970).

Both parties should note that this Decision is applicable of the FoodShare overpayment alleged here; the Decision has no bearing on the Medicaid overpayment case that was the companion to this case – Division of Hearings and Appeals case # 170054. A Decision for the Medicaid overpayment will be issued in the near future.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that Petitioner was overissuance \$327.00 FoodShare as alleged

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to reverse the \$327.00 overpayment that was the subject of this hearing. This must be done within 10 days of the date of this hearing.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of February, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 3, 2016.

Waupaca County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability